

1904-06 Chancery Causes: Elizabeth Yeary & vs. Milt H. Thompson &  
Lee Co.

Surgener, Bales, Flanary, Hyatt, Robinson

CA Estate Dispute  
T-Property

Will : 1901 : Caleb W. Thompson : Lee County

-Deed



To the Honorable H. A. W. Skeen, Judge of the Circuit Court of Lee County, Virginia;

Humbly complaining, your complainants, Elizabeth Yeary, and Susan Surgener would respectfully represent and show unto your honor that their father, C. N. Thompson, was, in his life time seized and possessed <sup>so</sup> of a certain real estate lying in the County of Lee, containing, more or less 221 acres, and more fully described by deed executed by R. E. Gray and wife to C. N. Thompson, an attested copy of which is here filed marked "A" and asked to be treated as part of this bill, that he sold in his lifetime to Arch Bales one fourth of said land and gave to his son Milt H. Thompson the proceeds of the sale, and being so seized and possessed of the <sup>other</sup> three fourths of said tract of land some time in the year 19-- departed this life, partly intestate. He made a will of one third of his real estate, to Bertha and Herbert Bales infants children of Clementine Bales deceased, nee Thompson, a daughter of his, a copy of said will is here filed marked "B" and asked to be made a part of this bill, the only heirs at-law of C. N. Thompson, deceased, are your complainants, Elizabeth Yeary and Susan Surgener, and Milt H. Thompson, a son. Your complainants allege that Milt H. Thompson has received his part of the estate of C. N. Thompson, Dec., having been advanced largely in ~~the~~ life time of C. N. Thompson, perhaps more than his equal share, your complainants, therefore, allege that the aforesaid described real estate should be divided into equal parts only, one-third to Elizabeth Yeary, one-third to Susan Surgener, and one-third to Bertha and Herbert Bales, pursuant to said will as it was the testators intention that they should have only one-third set out in said will, and that said infants should not share in the residue. Your complainants further allege that said will is void, because it gives to Herbert and Bertha Bales only what they would have been entitled to if no will had been made. And your complainants further state that the said real estate, is as they believe susceptible of partition among the parties entitled thereto. In tender consideration thereof, your complainants pray that the said Milt H. Thompson, Bertha S. Bales and Herbert O. Bales be made



parties defendant to this suit and answer the same but not on oath that being waived, that a proper guardian ad litem be assigned the infant defendants to defend their interests in this suit: that the said real estate be divided between the parties mentioned aforesaid, entitled thereto, as set out in bill and your complainants one-third each thereof be allowed to them; that Milt H. Thompson be for ever precluded from claiming any interest in said real estate, but that if he does that an account of advancements be taken, that proper process may issue and that such other further and general relief may be afforded your complainants as the nature of their case may require or to equity shall seem meet.

And your complainants will ever pray, &c.,

M. G. Kelly -----P.9.



I, Caleb N. Thompson of Lee County Virginia being of sound mind and memory do make and Publish this my last will and testament in the manner and form following to-wit:

I give to Bertha S. Bales and Herbert O. Bales Children of John Bales and Clementine Bales they being my Grand Children to the above named children I give one third of my real estate it being the one third of the land on which I now live. I make and appoint O. M. Yeary after my decease to be ga gardian for said children and also exutor to see that the Provisions of this my will to be fully put into effect: in testimony whereof I have hereunto set my hand and affixed my seal. this December 4th, 1899:

Witnessed by

William H. Speak

C. N. Thompson (Seal)

William Robinson

Virginia,

At a County Court begun and held for Lee County at the Court-house thereof, on Monday, the 19th, day of August 1901.

The last will and testament of C. N. Thompson was this day Produced in court, and said will was Proved ~~by~~ the oath of Wm. Robinson, one of the subscribing witnesses thereto, who also Proved the execution of said will in his Presence and in the Presence of William H. Speak, the other subscribing witness thereto, they all three being there Present together at the time of the signing of the same. Thereupon, said will is ordered to be recorded.

And thereupon, on motion of O. M. Yeary, the executor named in said will, who made oath as the law directs, and entered into a bond in the penalty of one thousand dollars conditioned according to law, with C. W. Wynn, his surety therein, who justified on oath as to his sufficiency, which bond, being acknowledged by the obligors, is ordered to be recorded; and a certificate is granted the said O. M. Yeary for obtaining Probate of said will in due form.

A copy, Teste; B. M. Morgan Clerk.

A Copy, Teste- *B. M. Morgan* --- Clerk.  
(Will B. No. 4. Page, 511)



Last Will of  
C. N. Thompson, Decd

copy-

Clerk 40cts.



This deed made this 2nd, day of April 1881, between Robert E. Gray and Mary J. Gray his wife of the County of Washington State of Virginia of the first part and C.N. Thompson of the County of Lee State of Virginia of the other Part Witnesseth that for and in consideration of the sum of thirteen hundred dollars nine hundred and eighty eight dollars of which is in hand Paid the receipt whereof is hereby acknowledged, three hundred and twelve dollars of which is to be paid twelve months after this date with interest from date & which is a lien upon the land hereinafter mentioned the said R.E. Gray and Mary J. his wife doth grant bargain and sell unto the said C.N. Thompson tu certain tracts or boundarys of land in Lee County Virginia about 16 miles west of Lee court-house and within 1/2 mile of Powells River, adjoining the lands of Thomas Moore, Daniel Vanhuss Joseph Hounshell, and John E. Debusk and others containing two hundred and twenty one acres, be the same more or less and is the same land sold by C.N. Robinson to A.J. Zink and sold by said Zink to John Lowry for James Gray and by James Gray to John Meek, and upon which the said Meek now resides, and it being the same land conveyed by Comr. J.W. Orr to R.E. Gray, to have and to hold the said two tracts of land (which Join each other) unto the said C.N. Thompson forever and the said R.E. Gray and Mary J. his wife doth warrant Generally the title to the land herein conveyed unto the said C.N. Thompson his heirs & assigns forever, witness the following signatures and seals.

R. E. Gray<sup>a</sup> (Seal)

Mary J. Gray (Seal)

Virginia, Washington County to-wit;

We James H. Hughes and A.A. McConnell Justices for the County aforesaid, do certify that R.E. Gray and Mary J. Gray his wife whose names are signed to the writing above bearing date of April 2nd, 1881. acknowledged the same before us in our County, and the said Mary J. Gray wife of R.E. Gray being examined by us Privily and apart from her husband and having the writing aforesaid fully explained to her she the said Mary J. Gray acknowledged the said writing to be her act, and declares that she had willingly executed the same and



does not wish to retract it. Given under our hands this 11th, day of April  
1881.

J. H. Hughes J. P. )

A. A. McConnell J. P.

Virginia, Lee County Court Clerk's Office Feby, 27th, 1882.

The foregoing deed bearing date April 2nd, 1881. between R. E. Gray and  
Mary J. Gray of Washington County Virginia, of the first Part and C. N. Thompson  
of Lee County Va. of the second Part was this day admitted to record upon the  
certificate of J. H. Hughes and A. A. McConnell two Justices of the Peace for  
Washington County Virginia.

Teste; John R. Gibson Clerk.

A Copy, Teste; B. H. Morgan ----- Clerk.  
( D. B. No. 19, Page, 558. )



Robert E. Gray et al  
<sup>vs</sup>  
C. N. Thompson

---

Copy

Clerk 60 cts.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *Mitt Thompson. Herbert Bales. and Bertha Bales*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the said court, on the *3rd* Monday in *February* 1902, to answer a bill in

chancery exhibited against *them* in our said court by *Elizabeth Yeary and Susan Surgeur*

And have then there this writ. Witness, A. B. Munsey, Clerk of our said Court, at the court-house,

the *10th* day of *February* 1902, and in the 126<sup>th</sup> year of the Common-

wealth.

A copy, Teste:

*A. B. Munsey* Clerk.  
Clerk.



Not Executed  
for want of time

B. L. Farrow

b. L. C.

Lie co.

Elizabeth Geary et al

VS.

SUBPENA  
IN CHANCERY.

Mitt Thompson et al

M. H. Ely

P. Q.

To 2nd February Rules.

1902. Circuit Court.

I accept legal  
tender on the  
within notice  
this Feb the 22nd  
1902.

M. H. Thompson



$\frac{1}{3} + \frac{2}{5} = \frac{11}{15}$   
Plaintiffs Costs  
Munsen, Clerk \$10.43  
Tax 1.50  
Shoff 2.50

Elizabeth Yeary et al.  
vs. E. Bill in Chancery -  
Milt W. Thompson et al.

---

1902. 2nd February rules  
bill filed & pa accepted  
by adult defendants  
+ D N

" 1st March rules held the  
last Monday in Feb'y  
D. N. Confirmed & Cause  
set for hearing.



To the Honorable H.A.W.Skeen, Judge of the Circuit Court of  
Lee County Virginia:

Humbly Complaining, your Complainants, Elizabeth Yeary  
and Susan Surgener, would respectfully represent and show unto your  
honor, that at the Second February rules, 1902, they filed their  
Original bill in your honor's Court, against Milt H. Thompson and  
others, the object of which was to partition the real estate of  
which C.N. Thompson, died seized and possessed, among his children  
and heirs at-law, who were entitled thereto, and to construe the will  
of C.N. Thompson dec.

In said cause, such proceedings were had, that at the November  
term, 1902, a decree was entered, appointing Commissioners, to partition  
said land, all of said proceedings, are here referred to, and made a  
part of this Amended and Supplemental Bill, as completely as if set  
out and copied herein, in full.

Your Complainants now desire to state fully, in addition  
to what is alleged in their Original Bill, the facts, which they are  
informed, advised, believe and charge, entitle them to file this their  
Amended and Supplemental Bill, or if necessary to be treated as such,  
"Independent Bill".

Your Complainants allege that C.N. Thompson, dec. in his  
life time, was the Father of Four Children, to wit: your Complainants  
Elizabeth Yeary, nee Thompson, Susan Surgener, nee Thompson, Clementine  
Bales, nee Thompson, and Milton H. Thompson (three daughters and one son)  
; that Clementine Bales, nee Thompson, departed this life on the \_\_\_ day  
of \_\_\_ 18 \_\_, leaving as her Children and heirs at-law Herbert and Bertha  
Bales, who are infants under the age of 21 years; that Clementine Bales  
died before her Father C.N. Thompson dec.; that C.N. Thompson in  
his life time was seized and possessed of a tract of land, situated  
in this County, containing 221 acres, more or less, said lands are more  
particularly described, in the deed filed as an exhibit, with your  
Complainants' Original Bill, to which reference is here made for a  
more particular description; that C.N. Thompson, was also possessed  
of some Personal property, and it being the desire, purpose and intention  
of said C.N. Thompson, to partition or divide his estate equally  
among his four Children, he on the \_\_\_ day of \_\_\_ 18 \_\_, sold and conveyed  
to one Arch Ball, a one -fourth, or about 54 acres, of the aforesaid



described tract of land, and the purchase money derived there from, he paid, or turned over to his son Milton H. Thompson, which your Complainants, allege, was an advancement to him, so intended and expressed at divers times by C.N. Thompson, before his decease,.

Your Complainants further allege, that their Father, C.N. Thompson, in his life time, by way of advancement to his daughter, Clementine Bales dec. made a will, by which he devised and bequeathed to Herbert O. and Bertha Bales, children and heirs at-law of Clementine Bales dec. one-third of his real estate, owned at the time of his death, which was equal to that portion, or amount, which he had advanced to his son Milton H. Thompson, a copy of said Will is filed as an exhibit, with Complainant's Original Bill, which is here made an exhibit, in this Bill and prayed to be treated as part of the same.

Your Complainants allege and charge, that the estate devised in said will, was an advancement, and intended by C.N. Thompson dec. as an advancement to his child, Clementine Bales dec. and, or, to her descendants, her said children aforesaid.

Your Complainants allege, that their Father, C.N. Thompson, now deceased, intended that his four Children, and, or, their descendants should share equally in his estate, and the advancements made by him to them, by will, or otherwise, and otherwise, should be accounted for to each other, and all his said children and heirs at law made equal.

Your Complainants allege, that C.N. Thompson, made other advancements to his daughter Clementine Bales dec. by gifts of personal property, to her children, Herbert and Bertha Bales, that were intended as advancements to them, for and on account of their Mother, Clementine Bales dec.

Your Complainants allege that their Father C.N. Thompson dec. made no advancements to them in his life time, nor by "will", but that he intended, for them, to share equally in his estate, with his other two children, which he had advanced as aforesaid; that before M.H. Thompson and Herbert and Bertha Bales, should be allowed to come in, and share in the residue of the estate of C.N. Thompson dec. that they should be compelled to bring into "Hotch Potch", that which they have received in the way of advancements made to them, and account for the same in the proper manner.



Your complainants allege, that their Father, C.N. Thompson, departed this life on the \_\_\_ day of \_\_\_ 18\_\_\_, partly intestate (having made the will aforesaid) leaving as before stated his said children and heirs at law; that O.M. Yearly on the \_\_\_ day of \_\_\_ 18\_\_\_, in the County Court of Lee County, qualified as Executor of the last will and Testament of C.N. Thompson dec.; that C.N. Thompson died seized and possessed of considerable personal property, which went into the hands of O.M. Yearly Executor aforesaid for administration; that said O.M. Yearly has not yet made a settlement of his account with said estate before the Commissioner of Accounts, so that it can be ascertained what amount will be in his hands for distribution, and purposes of equalization.

Your Complainants allege that error was committed in entering the decree, that was entered in their Original cause, on the 10th day of November, 1902, because an account of advancements had not been taken; and because of the injustice, <sup>done</sup> and inequitable claim of the defendants, Herbert and Bertha Bales, being allowed to share in the residue of the intestates' estate, without bringing in, and being compelled to account for what they had received in the way of advancements, which they should have done; and for other reasons plainly erroneous, and apparent on the face of the record.

All of which, are contrary to equity and good conscience.

In tender consideration whereof, and forasmuch as your Complainants are remediless in the premises, save by the aid of a Court of equity, where matters of this kind are, alone, and properly cognizable.

Your Complainants, therefore pray; that they be allowed to file this their Amended and Supplemental Bill, or if necessary that it be treated, as an "Independant Bill". and Petition to review and rehear, the decree entered in their Original Cause on the 10th day of November, 1902, and that at least, said causes, be heard together; and to obtain the relief herein sought, your complainants pray; that O.M. Yearly, Executor of the last will and Testament of C.N. Thompson dec. M.H. Thompson, and Herbert Bales and Bertha Bales (the last two infants under the age of 21 years) be made parties defendant to this bill and answer the same, but not on oath, that being waived; that O.M. Yearly Executor aforesaid, make a settlement of his administration account, showing the amount in his hands, due the estate of C.N.



Thompson dec.; that an account of the advancements, made by ~~the~~  
C.N. Thompson in his life time, to his children, by will or other wise  
be taken; that all his said children be made equal in the estate  
of their said, Father, as was his intention; that those who have ~~re~~  
received advancements, be compelled to bring what they have received  
by will, or other wise into Hotch Potch, and the whole of said estate  
be divided among those entitled thereto, according to the principles  
of equity and justice, and the law governing, equalization and advance-  
ments; and that if necessary, for the purpose of equalization, that  
the whole of said real estate of which C.N. Thompson, died seized  
and possessed, be sold and the proceeds of the sale, with the personal  
estate in the hands of the Executor, be divided in such a way, as  
will make all of said Children equal; that if your Complainants bill  
be treated, either as an amended, Supplemental, or Independant Bill  
and petition to rehear; that if necessary; W.E. Thompson, C.E. Flanary  
and A.R. Hyatt Commissioners appointed in said decree aforesaid, be  
made parties defendant to this bill, and be enjoined and restrained  
from performing the duties required of them by that decree, till the  
rights of the parties hereto, are fully determined by the future  
order of the Court; that in any event, your Complainants original  
cause and this cause be heard together; that the dlcree of November  
the 10th '1902 be reviewed and set aside; that a proper Guardian ad  
Litem be appointed to defend fo r the infant defendants, Herbert  
and Bertha Bales; that proper process may issue; and that that your  
honor grant unto your Complainants, all other and further relief  
generally, that their case may require, or to equity seem meet.

And your Complainants will ever pray, &c.

M. G. Ely. J. J.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *O. M. Geary* Executor  
of the last Will and Testament of *W. N. Thompson*  
*Deed, Milt Thompson, Bertha Bales and Herbert Bales*  
the last two infants under the age of 21 years  
to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be  
held for the said court, on the *1<sup>st</sup>* Monday in *Feb.*, 190*3*, to answer an  
*amended and Supplemental* bill in chancery exhibited against *them* in our said court by  
*Elizabeth Geary and Susan Surgenor*

And have then there this writ. Witness, *A. B. MUNSEY*, Clerk of our said Court,  
at the court-house, the *13<sup>th</sup>* day of *January*, 190*3*, and in the *12<sup>th</sup>*  
year of the Commonwealth.

*A. B. Munsey*, Clerk.



Elizabeth Geary et al

vs. } SUBPOENA  
IN CHANCERY.

O.M. Geary & Co. et als

M. H. Ely p. q.

To/et February Rules.  
1903 Circuit Court.

Legal service of the within  
Slip. is hereby accepted. This  
Jan. 13<sup>th</sup> 1902.

O.M. Geary  
Executor et c

M. H. Thompson



Elizabeth Yeary and others  
 vs. { Amended &  
 { Supplemental Bill  
 in Chancery -  
O. M. Yeary Executor et al

Nov 11<sup>th</sup> 1903  
 Plaintiffs Costs  
 Clerk 10.43  
 Tax 1.50  
 Shff 2.50  
 atty 15.00

1903 1st Feb by rules <sup>amended</sup> Bill  
 filed & pa accepted by  
 adult defendant  
 D. M.  
 " 2nd February D. M. Confd  
 & Cause set for hearing



To th Hon. H.A.W.Skeen Judge of the Circuit Court for Lee County:

The answer of Bertha S. Bales and Herbert O. Bales, infants under the age of twenty one years, by Rob't L. Pennington their guardian ad litem assign<sup>ed</sup> to defend them in a certain suit instituted in the Circuit Court for Lee County by Margaret Yearry and others against your respondents and others; and the answer of the said Rob't L. Pennington, guardian ad litem of the said infant defendants to the said bill in Chancery as aforesaid. For answer to said bill, or so much thereof that they are advised that it is necessary that they should answer, the said infant defendants by the said guardian ad litem answer and say, that they are infants ~~of~~ tender years, not knowing what their true interest in relation to the subject matter of the said bill, nor do they know whether the statement therein contained are wholly true. They confide the protection of their interest to the care of the court; and the said guardian ad litem of the said infant defendants, for answer to the said bill says that it is true that the said C. N. Thompson in his life time made a will wherein he made a disposition of a small portion of his real estate, thereby a true copy of such will, as your respondent is informed, is filed with the plaintiff's bill. It will be seen by an inspection of the copy of the will above referred to, that the said C. N. Thompson in his life time by said will gave to the respondent's wards one third of all the real estate of which the said C.N.Thompson was the owner. The said will dose not undertake to dispose of any other property or real estate ~~of~~ which the said Thompson was ~~an~~<sup>the</sup> owner; hence whatever real estate and personal property which the said Thompson would have after the one third was given to your respondent's ward, would fall into an undisposed residuum, and would pass to all the heirs of the said C. N. Thompson the same as if there had been no disposition of the other part. The construction therefore which the plaintiffs in their bill put upon the will, and the manner in which the land shall be partitioned is ~~ar~~<sup>ar</sup>onious, and your respondent contends that there should first be laid off to the said wards, one third of all the real estate of which said Thompson was owner, and the remain-

der thereof should be divided



der thereof should be divided equally between said wards, Elizebeth Yeary and Susan Surgener, in other words the said infants to be entitled to one third of the whole real estate and one third of the remaining two thirds, all of which is equal to five-ninths of the whole real estate. *Your respondent does not say the said will is this or contains by the Compliments but say the same is in*  
Your respondent is advised that it is true that the said Milt

Thompson has already been advanced in the life time of his father more than a sum sufficient to make up to the said Thompson his part of the estate. *file*

*to be*  
The <sup>y</sup>prayer therefore of your respondent is that the said will be construed, and that a proper decree be entered giving to such said infants such real estate as they are entitled to as devisees under said will and as heirs of the estate of C.N. Thompson; that in the partition of the said real estate your respondent's said ward have laid off to them five ninths of the whole of said real estate; that the court enter a decree allowing to your respondent an allowance of a fee as in the judgement of the court it may see right and proper. And now having answered as fully as he is advised it is necessary that he should answer prays to be hence dismissed, &c.

*Robert L. Pennington*  
*Guardian Ad Litem for Herbert O.*  
*Bertha S. Bales.*

*Given to before me this the 7<sup>th</sup> day*  
*June 1902.*



*James to [unclear] [unclear] [unclear]*

*Beethoven 2. [unclear]  
[unclear] [unclear] [unclear] [unclear]  
[unclear] [unclear] [unclear] [unclear]*

early that he should answer preve to be hence dismissed, &c.

or. And now having answered as fully as he is advised it is neces-

of a line as in the judgement of the court it may see right and prop-

the court enter a decree allowing to your respondent an allowance

of five ninths of the whole of said real estate; that

said wife and said real estate your respondent, a said ward have

said wife and said real estate of the estate of C.W. Thompson; that in the

infants and real estate as they are entitled to as devisees under

constitution and laws a proper decree be entered giving to such said

infants and real estate of your respondent is that the said wife

of the estate.

more than a sufficient to make up to the said Thompson his part

Thompson has already been advanced in the life time of his father

Your respondent is advised that it is true that the said wife

whole real estate.

remaining two thirds, all of which is equal to five-ninths of the

entitled to one third of the whole real estate and one third of the

years and Susan S. Green, in other words the said infants to be en-

get thereof should be divided equally between said wards, Elizabeth

*Bertha S. Bauer  
advised of  
G. A. L.  
[unclear]  
[unclear]*



Elizabeth Yeary, ~~xxxx~~ et al,

Complainants,

Vs. Demurrer.

O.M. Yeary, et al.

Defendants

The separate demurrer of Bertha and Herbert Bales to a bill filed in the circuit court for Lee County against them and others by Elizabeth Yeary et al, by the G.A.L. for said defendants, they being infants.

The said defendants by their said guardian ad litem comes and says that the said bill of the said complainant is not sufficient in law to call upon them to answer, and therefore prays judgement of the court, for the following reasons:

1.- Beacuse the said bill is intended to be a bill of review, which seeks to have set aside a decree of the court in another cause wherein if the plaintiffs in this causes are agrieved their remedy is by way of appeal and not by bill of review.

The plaintiff claims error of law, and that on this account the decree entered in the cause refered to in plaintiffs bill should be set aside. In respect to what errors of law the court can review a cause, the court of appeals has said in the case of Rawlins vs Rawlings, 75 Va, 88, says "As to errors of law they must be such as appear on the face of the decrees, orders and proceedings in the cause- arising on facts either admitted by the pleadings or stated as facts in in the decrees. Such errors of law may be corrected by bill of review, but if the errors complained of be errors of judgement in determining the facts, such errors can be corrected only by appeal." this case goes on furthur to say that you can not llok to the evidence to show error as to statement of facts in the decrees. In this case, the court can only look to the decree beacuse there was nothing admitted in the pledings tending to show the contention of the plaintiff in this bill.

We also refer to 76 Va. 609 also to 90 Va 25. 4 Minor 107.

2- Mistake of Law can not be taken advantage of by Bill of Review.

R.H. Pennington G.A.L.

By  
Pennington Bros -



Elizabeth Yeary, et al. . . . . . Plff.  
vs, (In Chancery.

Milt H. Thompson, et al. . . . . . Deft.  
and

Elizabeth Yeary, et al. . . . . . Plff.  
vs. (In Chancery.

O. M. Yeary, Executor, et al. . . . . . Deft.

These causes came on this day to be heard upon the papers formerly read in the cause and was argued by counsel.

On consideration of which and for reasons appearing to the court, being stated by the attorney for the plaintiff, the matters in controversy had been settled and that the lands had been <sup>for</sup> partitioned among the parties entitled thereto by themselves, mutually.

It is adjudged, ordered and decreed, that Elizabeth Yeary, Susan Surgener, and Mack Thompson and O. M. Yeary, Guardian for Herbert and Bertha Bales, pay the costs of this suit in proportion of their interest ~~and it~~ to be taxed by the clerk for which execution may issue in favor of the officers of the court.

And nothing further remaining to be done these causes are stricken from the docket.



Elizabeth Gray et al,  
vs et al decree final —  
Milt Thompson et al  
Entered C. & B. No —  
7, Page 505.

Enter This

H. C. W. Sherr

Sept. 20<sup>th</sup> 1904



Elizabeth Yeary and others, Plaintiffs,

Against) In chancery,

M.H.Thompson, and others, Defendants,

This cause came on this day to be heard upon the papers formerly read in the cause, and was argued by Counsel:

On consideration of which, it is adjudged ordered and decreed that the Commissioners, appointed in this cause to partition the lands of C.N. Thompson dec, on the 10th day of November 1902. will proceed to perform the their duties under said decree, and it appearing that since the last term of this Court that the interest of the defendants Herbert And Bertha~~B~~ Bales has been sold and purchased by Mack Thompson. Said Commissioners will partition said land as follows; they will lay off and assign to Elizabeth Yeary one-third of said tract of land described in said bill; they will lay off and assign to Susan Surgener one -third; and they will lay off and assign to Mack Thompson one -third of said tract, of <sup>lands</sup> the last one-third being the entire interest of Herbert and Bertha Bales in the lands owned by C.N. Thompson at the time of his death, said lands will be partitioned according to quantity and <sup>a</sup> quality, and they will report to court and the Cause is continued.



Elizabeth Yeary and the  
no. 11 Deere  
M. H. Thompson et al  
Entered Co. B. 7. P. 303.

Enter this

H. M. Co Deere

July 6<sup>th</sup> 1903.



Elizabeth Gray et al Comps

M. H. Thompson et al Defts

} M. Chauncy

This cause came on again to be further heard upon the papers formerly read therein, and the amended or supplemental bill of said complainants, which is treated by the court as petition to re-hear the said cause, and was argued by counsel: On consideration of all which and for reasons appearing to the court, it is <sup>of the</sup> opinion that the order entered in said original cause on Nov. 10<sup>th</sup> 1907 was interlocutory and not final and that there was error of law apparent upon the face of the said decree and records of said original cause in this: "(2) ~~the defendants~~ <sup>that in the</sup> construction of the will of the said C. H. Thompson, the infant defendants, Bertha & Herbert O. Bales are entitled to one-third of all the real estate of which the said Thompson died seized and possessed as devises under the said will, and that as the said Thompson died intestate as to the remainder of said estate are entitled to 1/4 of that remainder making their



interest in the said estate as  
 devises and as lines  $\frac{1}{2}$  of the  
 whole real estate. (3) That the  
 said plaintiffs are entitled to the  
~~remainder~~ remainder of said real es-  
 tate to be equally divided between  
 them. It is therefore adjudged, ordered  
 and decreed that ~~xxx~~ the said the  
 said Bertha & Herbert Q. Balles take  
 and hold an undivided one-half  
 of the said real estate. It is  
 therefore adjudged, ordered and  
 decreed that so much of said  
 decree above quoted and which  
 gives to said Bertha & Herbert Q.  
 Balles a one-half of said C. H.  
 Thompson's real estate be and the  
 same is hereby annulled, vacated and  
 set aside, and in lieu of said inter-  
 est so decreed in said cause on Nov.  
 10<sup>th</sup>, 1902, it is adjudged, ordered  
 and decreed that said Bertha & Her-  
 bert Q. Balles take and hold under  
 the will of said C. H. Thompson  
 a one-third undivided interest in  
 all the real estate of said C. H.  
 Thompson, and one-third of the  
 personal estate in the hands of  
 Q. M. Zeary executor of the is-



tate of the said C. H. Thompson.  
It is further adjudged, ordered  
and decreed that the commis-  
sioners appointed in said order  
of Nov. 10th 1902 to partition  
said lands will defer their  
action hereunder until a future  
order of this court and this  
cause is continued.



Elizabeth Youngthal

no } Steen

With Thompson et al

Ent. Corp. No 7. P. 29.

Enter this

March 11th, 1903

H. A. W. Steen



Elizabeth Yeary and others, Plaintiffs,  
Against) In chancery,  
M. H. Thompson, and others, Defendants,

This cause came on this day to be heard upon the papers formally read in the original cause, the amended bill of Plaintiffs, which was asked to be treated as a petition to review, correct and set aside a decree entered in said original cause, Nov. 10, 1902., and objections to said petition being filed and demurrer to said a amended bill and petition, filed in writing by the Guardian ad Litem for the infant Defendants, Herbert and Bertha Bales, and was argued by counsel.

On consideration of which, the court is of the opinion that the decree entered in said original cause, Nov. 10, 1902., is interlocutory and not final, and is further of opinion, that there is error of law apparent on the face of said decree; it is therefore adjudged, ordered and decreed, that the objections to filing said petition, to review and set aside said decree, be overruled, and said petition allowed to be filed and that said decree entered in the original cause, Nov. 10, 1902., be set aside and held for naught for error law, apparent to the court on the face of said decree and proceedings and the said demurrer to said petition of review and amended bill be overruled.



Elizabeth Yeary and others  
vs. { decree  
M. H. Thompson and others

K

Enter this

March 6<sup>th</sup> 1903.



Elizabeth Yeary and Susan Surgener,

Complainants,

vs.

In Chancery,

Milt Thompson, Bertha S. Bales and Herbert O. Bales, Defendants.

This cause came on this day to be heard upon the papers  
1  
formerly read therein and the depositions of witnesses, and was  
argued by counsel. On consideration of all which the court is  
of opinion (1) that Milt Thompson has been advanced out of the  
real estate, all that he is entitled to of the estate of C.N.  
Thompson, in the life time of the said Thompson, (2) that in the con-  
struction of the will of the said C.N. Thompson, the infant de-  
fendants, Bertha and Herbert O. Bales are entitled to one third  
of all the real estate of which the said Thompson died seized and  
possessed as devisees under the said will, and that as the said  
Thompson died intestate, as to the remainder of the said estate  
are entitled to  $\frac{1}{4}$  of that remainder, making their interest in  
the said estate as devisees and as heirs  $\frac{1}{2}$  of the whole  
real estate (3) that the said plaintiffs are entitled to the re-  
mainder of the said real estate to be equally divided between  
them. It is therefore adjudged ordered and decreed that the said  
Milt Thompson, be and he is hereby precluded from setting up any  
claim or interest in the said real estate; that the said Bertha S.  
and Herbert O. Bales take and hold an undivided one half of the said  
real estate, and that the plaintiffs take and hold one fourth  
undivided interest each in said real estate; that WELBERT Thompson,  
C.E. Flanary and \_\_\_\_\_, who are hereby appointed  
commissioners for the purpose, do go upon the said land in the  
bill and proceedings mentioned and lay off to the said Elizabeth  
Yeary one fourth in value of the said land, and to Susan Sergener  
a like one fourth in value of said land and to Herbert O. and Bertha  
S. Bales together one half in value of the said land, and report  
their action to the next term of this court; ~~that the said Herbert~~  
~~O. Bales and Bertha Bales recover of the plaintiffs their costs in~~  
~~the litigated question of the construction of the said will, in~~  
~~cluding an attorneys fee of \$10.00, that the remainder of the~~



~~of the~~ costs of the said suit be bourn in proportion to the amount of the interest of the said parties, that is, the said Bertha S. Bales and Herbert O. Bales shall bear one half of the costs and the said plaintiffs one fourth each of the said costs, and the clerk in taxing the said costs will also tax as part of the costs to be bourn by the land an attorney's fee for the plaintiffs counsel of \$15.00; the costs incurred by the plaintiffs in the litigation of the construction of the will will be paid by them and shall not be added as part of the costs of the partition and general costs of this suit.

It having been asked by R.L. Pennington in his answer as guardian ad litem for the said Herbert O. and Bertha Bales that a reasonable fee be allowed him as guardian ad litem, and it appearing to the court that it was necessary that he render more than mere formal appearance for them, it is adjudged ordered and decreed that he be allowed a fee of \$50.00, to be paid out of the subject matter of this suit, <sup>which is deemed reasonable for his services</sup> and which shall attach as a lien on <sup>going to said infants</sup> ~~this interest in~~ said land until paid. And the guardian of said infants is hereby authorized to pay said sum of money out of any funds that may come to his hands belonging to said infants. And this cause is continued.

And the Executor of the estate of C. N. Thompson is authorized to pay the costs of this partition out of any funds that are or may come into his hands going to the several parties and of their respective shares & charge the same to such distribution & this cause is continued.



Elizabeth Geary  
vs

Decree  
Partition

Wm. Thompson vs

Cent. Ct. B. No 7  
P. 179,

Elect. this Nov. 10-  
1902  
H. C. W. Shaw



Elizabeth Yeary, and others, Plaintiffs.

Against) In Chancery.

M.H. Thompson, and others, Defendants.

This cause came on this day to be heard upon the bill of complainants, process duly executed, by acceptance on the adult defendant, M.H. Thompson, the answer ~~of the~~ of the infant defendants, by R.L. Pennington, their guardian ad litem, duly sworn to, and general replication thereto, and was argued by counsel.

On consideration of which, M.H. Thompson, failing to appear answer, plead and demur, the complainants bill as to him is taken for confessed, and the cause is continued.



Elisabeth yeary etols,  
no. { Deem  
M. W. Thompson et al

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Entered on City C.B.  
No 7 Page 84.

Enter this

H A W Deen

7/2/1912



The depositions of William H. Yeary and others taken before me A. B. Munsey, a commissioner in Chancery for the Circuit court of Lee County on the 20th day of October 1902. Pursuant to agreement to be read as evidence on behalf of the plaintiffs in a certain suit pending in the Circuit court of Lee County wherein Elizabeth Yeary et als are plaintiffs and Herbert and Bertha Bales are the defendants.

Present M. G. Ely Atty. for the Plaintiffs and R. L. Pennington Guardian ad Litem. for Bertha and Herbert Bales.

William H. Yeary a witness of lawful age being duly sworn deposes and says.

Ques. Please state your age residence occupation and relation to C. N. Thompson deceased.?

Ans. I am fifty nine years of age, reside at Douglas Virginia, C.N. Thompson is my father -in -law.

Ques. Please state whether or not you ever heard C.N. Thompson before his death say anything about what disposition he intended to make of his property and especially his real estate state all he said as near as you remember ?

Ans. As to his land I heard him speak of that often, the reason that he made his will, in which he willed one third of his land to Bertha and Herbert Bales, was that some of John Bales creditors had said that they intended to make their money out of that land at his death. And he intended to will it to them directly.

Ques.- Do you know whether or not Mr. Thompson intended to for these children to have only one third of his real estate or did he intend for them to have one third and also share in the balance ?

The two preceding questions and answer thereto is excepted to because oral testimony is inadmissible to explain the written will of the decedent C. N. Thompson the language of the will must speak for itself it is a written instrument and the construction of it is a matter of law and can not be explained on one side by the statements of witnesses. R. L. Pennington for Bertha and Herbert Bales.

AAAns.- He just intended for them to have one third what he had willed to them.

Ques.



Ques.-

Do you know why he willed these children one third of his real estate instead of one fourth didn't he have four children or heirs?

~~XX~~

Ans. - He had given Thompson his before his death and he meant to divide the balance between those three that is Elizabeth Yeary Susan Surgenor and the Bales children.

*Susan Surgenor, and the Bales children*

And further this deponent saith not.

*Wm H Yeary*



M. H. Thompson another witness of lawful age being duly sworn deposes and says.

Ques. -Please state your age residence and occupation and what relation you are to C. N. Thompson deceased.?

A  
Ans. I am forth eight years old my occupation is farming and Ann is my nearest post office and C. N. Thompson is my father.

Ques.- Please state whether or not you ever heard your father say in his life time whether or not he intended for Herbert and Bertha Bales to have only one third of the real estate or more than one third ?

The foregoing question or any answer thereto is excepted to because a verbal statement of the witness is in competent to alter vary or contradict the terms or meaning of a written instrument .

R. L. Pennington for infants.

Ans. All I heard him say was that he intended to fix their part in a way that John Bales would not get any hold on it ,nor he never intended that what he had to go to pay John Bales debts I believe that is about all he ever talked to me about

And further this deponent saith not.

*M. H. Thompson*



William Robison another witness of lawful age being duly sworn deposes and says.

Ques. State your age residence occupation and all that you may have heard C. N. Thompson say in his life time about what disposition he intended to make of his real estate and his reasons for it, if any ?

The foregoing question is objected to (except what relates to the witness age and occupation) ~~is objected to~~ because oral testimony can not be introduced to vary or contradict the terms of a written instrument.

R. L. Pennington for infants.

Ans. I am sixty five years old , am a farmer and my Post office is Ann , Virginia. Mr. Thompson came to my house and said he regarded me as his friend and wanted to invest a secret that he wanted me to go with him over to Squire Speeks' that he was going to deed or convey ~~his~~ to John Bales children their mothers part of his real estate for he didn't want John Bales to have anything to do with their mothers part, for if he did, he would run through with it.

All he intended for those children to have was one third of his real estate just what the will called for, I went with to Squire Speeks he made the will and I witnessed it.

And further this deponent saith not.

*W. M. Robinson*

Virginia Lee County to-wit:

I, A. B. Munsey a commissioner in Chancery for the Circuit

Court of Lee County do hereby certify that the depositions of William Yeary , M.H. Thompson and William Robison were taken subscribed and sworn to before me at the time and place and for the purposes in the caption mentioned.

Given under my hand this the 30th day of October 1902.

*A. B. Munsey Comm in Chcy*



Elizabeth Yeary et al  
oo { Depositions

Bertha & Herbert Bales

Taken before me as Comr  
in Chy and filed Oct  
20th 1902.

A. B. Munsey Clerk

Comr in Chy 2 hours  
Munsey, \$1.50



Elizabeth Yeary, et al.,

vs.      Brief for    Berta and H.O. Bales,

Milt Thompson, et al.,

-----0-----

S.W. Thompson made a will and disposed of a part of his property, and died intestate as to the remainder; in his will he gives two of his grand-children, who are of his heirs, one third of his real estate, plaintiff claims that it was the intention that this was all the real estate these children should get and undertakes to show by paroll proof the intention of the testator.

"TESTATOR CAN ONLY DISINHERIT HIS HEIRS, (or prevent them from taking his property) BY GIVING HIS ESTATE TO SOME ONE ELSE" so holds the case of Boisseau vs Aldridges, 5 Leigh, 222. Therefore when a man leaves any thing undisposed of by will his heirs are entitled to it, notwithstanding the fact that the will may expressly say they shall not have his property or a part of it. In this case the testator disposed of one third of his estate, and left the remainder to go to whom, his heirs of course. Herbert and Bertha Bales are part of his heirs and under the law ~~enacted~~ entitled to an equal share of the remainder according to the relation they bear to the decedent. See also 2 Leigh 642.

"Paroll evidence of the declarations of a testator, can not be received to explain the intention of the testator. The declarations of the testator as to his intentions, are admissible only to explain a latent ambiguity, or rebut an equity. A different rule would repeal the statute requiring wills to be in writing". Puller v. Puller, 3 Rand. 83 & 90.

"The object in construing wills, is to arrive at the intention of the testator, but that intent is to be gathered from the language used; for the object in construction is not to ascertain the presumed or supposed intention, ~~expressed~~ but the expressed intention of the testator, that is the meaning, which the words of the will convey." Warring v Basher 91 Va. 286.

See also Sec. 908 of Underhill on the Law of wills for a full statement of the law regarding introduction of paroll evidence.



Whatever property decedent leaves undisposed of by will, whether for lack of will or because for some reason a devise can not take effect, such property falls into the undisposed residuum and "The heir in such cases takes the estate, not on the ground of and supposed intention on the part of the testator in his behalf, but because he is entitled to any part of it which is not legally and effectually given to some other person." Stonestreet vs Doyle, 75 Va., 356, 358.

We think this sufficient authority to support the answer of the guardian ad litem for the defendants, Bertha and Herbert Bales, though we might go on citing case after case to the same purport.

R.L. Pennington, G.A.L.

for infant defendants.



To R. L. Pennington G. & L. for Herbert & Bertha Bales -

TAKE NOTICE. That we on the 3<sup>rd</sup> day of

Oct. 1902, 1892, at our young store, Douglas, Va.  
between the hours of 9 a.m. & 5 P.m.

will proceed to take the deposition of Will Robinson and others

which, when taken, are intended to be read as evidence on our behalf in a certain suit in Chancery  
now pending in the Circuit Court of Lee County, State of Virginia, in which

Elizabeth Yeary and others are plaintiff and  
Herbert Bales and others are defendant.

And if from any cause the same be not commenced, or if commenced, be not concluded on that day, the  
taking thereof will be adjourned from time to time, and from place to place, until completed.

This, Sept. 29<sup>th</sup> 1902, 1892.

Very Respectfully,

Elizabeth Yeary and others  
By counsel,



Elizabeth, Mary and other

vs. { {notice to take sep

Butler Babo and others

Executed Sept 30 - 1792

by delivery a true copy

of the within Summons

to J. R. L. Remington

D. B. Remington J. S.

for W. J. Milham

S. L. C.